

STATE OF MICHIGAN
COURT OF APPEALS

MARY PENA,

Plaintiff-Appellee,

v

THOMAS W. MINGUSKE, D.D.S., and
ALTERNATIVE DENTAL SERVICES,

Defendants-Appellants.

UNPUBLISHED

May 31, 2007

No. 265986

Eaton Circuit Court

LC No. 03-001692-NH

Before: Fort Hood, P.J., and White and Borrello, JJ.

WHITE, J. (*dissenting*).

I would affirm. It was reasonable for plaintiff's counsel to conclude, based on the Supreme Court's decision in *Cox v Flint Bd of Hosp Managers*, 467 Mich 1; 651 NW2d 356 (2002), which held that the specialist/general practitioner distinction found in former MCL 600.2912a did not apply to nurses because a nurse is not a "medical practitioner, or engaged in the practice of medicine," *id.* at 19, that *Decker v Flood*, 248 Mich App 75; 638 NW2d 163 (2001), which had earlier applied the distinction to dentists, was no longer controlling. Indeed, this Court's recent decision in *Brown v Hayes*, 270 Mich App 491, 499-500; 716 NW2d 13, rev'd in part 477 Mich 966 (2006), although decided after the affidavit of merit was filed, supports that plaintiff acted reasonably. Further, it was reasonable for plaintiff's counsel to believe that MCL 600.2169(1) was otherwise satisfied, because if the provisions relating to specialists and general practitioners were inapplicable, and only § 2169(1)(b) was controlling, as in *Brown*, then it was reasonable to conclude that Humphries was qualified to give expert testimony under that section because he is a licensed dentist, as is defendant.

/s/ Helene N. White